

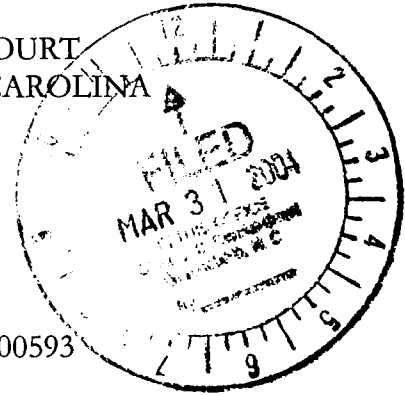
MAR 31 2004

D/klm

13.

klm

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



RUFUS E. THOMPSON,

Plaintiff,

v.

JOHN E. POTTER,

UNITED STATES POSTAL SERVICE,

Defendant.

1:03CV00593

MEMORANDUM OPINION

BEATY, District Judge.

This matter was heard on March 18, 2004, before the undersigned District Court Judge, upon Defendant's Motion to Dismiss [Document #3] Plaintiff's Complaint on the basis of Plaintiff's failure to file his action within the applicable statute of limitations. Because Plaintiff is a federal employee, Plaintiff is governed by the requirements of Section 717 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16. 42 U.S.C. § 2000e-16(c) provides, in pertinent part, that "[w]ithin 90 days of receipt of notice of final action taken by a department, agency, . . . or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department [or] agency, . . . an employee . . . may file a civil action" In this case, Plaintiff received his Notice of Final Action on March 25, 2003. Therefore, the deadline for Plaintiff to file a civil action in this matter was June 23, 2003. Plaintiff's counsel acknowledged both in his Memorandum of Law in Opposition to Defendant's Motion to Dismiss [Document #10] and before this Court at the March 18, 2004, hearing that he had received the Notice of Final Action by the Defendant agency on March 25, 2003. It was also acknowledged by counsel at the hearing that

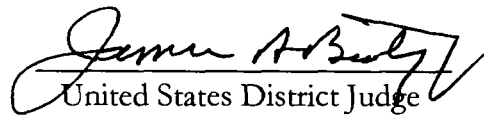
the deadline for filing Plaintiff's civil action was ninety days later on June 23, 2003. It was further acknowledged, however, that Plaintiff's counsel mistakenly calculated the deadline to be June 24, 2003, rather than the correct deadline of June 23, 2003. As a result, Plaintiff's Title VII civil action against the Defendant agency was not filed with this Court until June 24, 2003.

Plaintiff nevertheless requests that the Court apply the doctrine of equitable tolling to deny Defendant's Motion to Dismiss. Equitable tolling may be used to toll the effect of a statute-of-limitations bar in certain limited circumstances, such as when (1) the claimant received inadequate notice, (2) a motion for appointment of counsel was pending, (3) the court led the plaintiff to believe that he had completed all the necessary requirements, or (4) the defendant's affirmative misconduct lulled the plaintiff into inaction. See Baldwin County Welcome Ctr. v. Brown, 466 U.S. 147, 151, 104 S. Ct. 1723, 1725–26, 80 L. Ed. 2d 196 (1984). Plaintiff's counsel, however, could not point to the presence of any of these circumstances in this case so as to excuse his failure to file Plaintiff's claim within ninety days of receiving Notice of the Final Action on March 25, 2003. Plaintiff's counsel's unfortunate error in not filing Plaintiff's civil action in a timely fashion of June 23, 2003, at best can be viewed as excusable neglect. However, as Defendant notes, “[p]rinciples of equitable tolling do not extend to what is at best a garden variety claim of excusable neglect in failing to file in a timely manner.” Shipley v. USPS, 286 F. Supp. 2d 657, 662 (M.D.N.C. 2003) (citing Irwin v. Dep’t of Veterans Affairs, 498 U.S. 89, 96, 111 S. Ct. 453, 458, 112 L. Ed. 2d 435 (1990)). Because Plaintiff's civil action was not timely filed, Plaintiff's Complaint must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to adhere to the procedural requirements of 42 U.S.C. § 2000e-16(c).

For the foregoing reasons, therefore, Defendant's Motion to Dismiss [Document #3] is granted. An Order and Judgment consistent with this Memorandum Opinion shall be filed

contemporaneously herewith.

This, the 31 day of March, 2004.


United States District Judge